

UNITED STATES COURT OF APPEALS **December 29, 2010**
FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

In re:

DOLE FOOD COMPANY, INC.,
Petitioner.

No. 10-4223
(D.C. No. 2:08-CV-00265-BSJ)
(D. Utah)

ORDER

Before **KELLY, HARTZ, and HOLMES**, Circuit Judges.

Petitioner Dole Food Company, Inc., seeks a writ of mandamus either (1) reversing the district court’s denial of summary judgment on the issue of punitive damages; or (2) compelling the district court to grant Dole’s pending renewed summary-judgment motion on the issue of punitive damages.

“[A] writ of mandamus is a drastic remedy, and is to be invoked only in extraordinary circumstances.” *In re Cooper Tire & Rubber Co.*, 568 F.3d 1180, 1186 (10th Cir. 2009) (quotations omitted). The writ “is used only to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.” *Id.* (quotation omitted). Three conditions are necessary to the issuance of a writ of mandamus: (1) the party must have no other adequate means to attain the desired relief;

(2) the party's right to the writ must be clear and indisputable; and (3) the court is satisfied that the writ is appropriate under the circumstances. *Id.* at 1187.

Inherent in the first condition is the principle that mandamus cannot "be used as a substitute for the regular appeals process." *Cheney v. U.S. Dist. Court*, 542 U.S. 367, 380-81 (2004). Thus, "mere error, even error that might lead to reversal on a direct appeal," is not enough for mandamus; rather, the challenged decision "must be so clearly without proper basis as to amount to a usurpation of power." *United States v. Carrigan*, 804 F.2d 599, 604 (10th Cir. 1986).

Petitioner has not demonstrated that the district court usurped its power by denying summary judgment. Appellate review is an adequate remedy should petitioner become subject to a punitive-damages award. Accordingly, the petition for mandamus relief is DENIED. The motion for a stay is DENIED as moot.

Entered for the Court,



ELISABETH A. SHUMAKER, Clerk

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT
OFFICE OF THE CLERK**
Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257
(303) 844-3157

Elisabeth A. Shumaker
Clerk of Court

December 29, 2010

Douglas E. Cressler
Chief Deputy Clerk

Mr. Theodore J. Boutrous Jr.
Mr. Blaine H. Evanson
Gibson Dunn
333 South Grand Avenue
Los Angeles, CA 90071-3197

Ms. Sarah L. Brew
Ms. Lisa M. Schmid
Nilan, Johnson, Lewis PA
400 One Financial Plaza
120 South Sixth Street
Minneapolis, MN 55402

Ms. Camille N. Johnson
Snow, Christensen & Martineau
10 Exchange Place, 11th Floor
P.O. Box 45000
Salt Lake City, UT 84145-5000

RE: 10-4223, In re: Dole Food Company, Inc.
Dist/Ag docket: 2:08-CV-00265-BSJ

Dear Counsel:

Enclosed please find an order issued today by the court.

Please contact this office if you have questions.

Sincerely,



Elisabeth A. Shumaker
Clerk of the Court

cc: Richard D. Burbidge
Jacquelynn D. Carmichael
Andrew J. Dymek
Jefferson Wright Gross
Alan M. Maxwell
Robert James Shelby
Bradley W. Sullivan
Joshua E. Swiger

EAS/lab